

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed July 5, 2006. Claims 1-43 were pending in this application and are rejected in the Office Action. New Claims 44 and 45 are added herein. For at least the reasons discussed below, Applicant respectfully requests reconsideration and favorable action in this case.

#### **Drawing Objections**

The Examiner objects to the drawings under 37 C.F.R. § 1.121(d) because Figure 1 contains a typing error and because Figures 2-5 include an unreadable font size. Applicants have submitted Replacement Sheets to replace the original formal drawings which were previously submitted. Applicants note that due to its new size, Figure 3 has become Figures 3a-3d, Figure 4 has become Figures 4a-4b and Figure 5 has become Figures 5a-5b. Favorable action is respectfully requested.

#### **Section 112 Rejections**

The Examiner rejects Claims 3, 19, and 32 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of which Applicant regards as the invention. Applicants have amended these claims as suggested by the Examiner. Favorable action is thus respectfully requested.

#### **Section 101 Rejections**

The Examiner rejects Claims 30-43 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicants have amended these claims to recite software in a format believed to be patentable subject matter under section 101. Favorable action is respectfully requested.

#### **Section 103 Rejections**

The Office Action rejects Claims 1-43 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0004850 issued to Li ("*Li*") in view of U.S. Publication No. 2004/0073507 issued to Scott ("*Scott*").

Claim 1 of the present application, as amended, includes the following limitations:

A method of management for procurement bidding comprising the steps of:

receiving a request for quote including requirement information from a buyer for a predetermined transaction;

packaging the requirement information into a bid/auction presentation for the predetermined transaction, wherein the packaging comprises generating a bid/auction presentation in a standardized format including at least one of descriptions, specifications, technical parameters, deadlines, and static and interactive graphical renderings with respect to the predetermined transaction;

selecting a plurality of sellers to each respectively provide at least one competitive bid for the predetermined transaction;

displaying the bid/auction for inspection to the plurality of sellers;

moderating a bid/auction for a predetermined interval to enable the plurality of sellers to submit a plurality of competitive bids; and

presenting bid results to the buyer for selection of winning bid from among the sellers.

Independent Claims 17 and 30 include similar, although not identical, limitations.

In order to establish a *prima facie* case of obviousness, three requirements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one skilled in the art, to modify a reference or combine multiple references; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all of the claim limitations. M.P.E.P. § 2143. In the present case, a *prima facie* case of obviousness cannot be maintained for at least because (assuming for the sake of argument that the references suggest or motivate a combination of the references) *Li* and *Scott*, whether considered singly, in combination with one another, or in combination with information generally available to those of ordinary skill in the art at the time of the invention, fail to disclose all of the elements of the pending claims.

For example, neither *Li* or *Scott* disclose “packaging the requirement information into a bid/auction presentation for the predetermined transaction, wherein the packaging comprises generating a bid/auction presentation in a standardized format including at least one of descriptions, specifications, technical parameters, deadlines, and static and interactive

graphical renderings with respect to the predetermined transaction.” Portions of this cited limitation were added from canceled Claim 5. Regarding Claim 5, the Examiner indicates that the limitations quoted above are disclosed in *Li* in Figure 2 and at Paragraph 0057. However, this passage merely discloses the receipt of an RFQ from a buyer that includes transaction terms. This disclosure is analogous to the claimed “receiving a request for quote including requirement information from a buyer for a predetermined transaction.” There is no disclosure that such terms of an RFQ are then packaged into a *bid/auction presentation* in a *standardized format*. *Li* discloses that the received RFQ is simply made available to the suppliers.

For at least this reason, Applicants respectfully request reconsideration and allowance of Claim 1, as well as the claims that depend from this independent claim. In addition, independent Claims 17 and 30 include similar limitations to those discussed above and thus are allowable for analogous reasons. Thus, Applicants respectfully request reconsideration and allowance of Claims 17 and 30, as well as the claims that depend from these independent claims.

In addition to depending on an allowable independent claim, many of the dependent claims include additional limitations that are also not disclosed in the cited references. As an example only, dependent Claim 9 recites “prior to the step of moderating an auction, a step is provided for soliciting a closed bid from each of the plurality of sellers, wherein the solicited closed bids establish an opening auction bidding level prior to the predetermined auction interval.” Claims 27 and 40 recite similar, although not identical, limitations. However, neither *Li* or *Scott* disclose such a limitation. The passages of *Li* cited by the Examiner only disclose that the auction can be open or closed, and not that there can be both closed bids from sellers *and* an open auction where the closed bids establish an opening auction bidding level. For at least this additional reason, Applicants respectfully request reconsideration and allowance of Claims 1, 27 and 40.

As another example, dependent Claim 20 recites receiving the required information “from input fields on a web page for submitting information on at least one of: specifications, technical parameters, and deadlines with respect to the predetermined transaction.” Claim 33

recites similar, although not identical, limitations. The Examiner rejects these claims under the same rationale as Claim 4, but Claim 4 does not require inputting information via input fields for receiving the information. Furthermore, neither *Li* or *Scott* disclose such a limitation. *Li* only discloses that a buyer electronically submits an RFQ. For at least this additional reason, Applicants respectfully request reconsideration and allowance of Claims 20 and 33.

#### **New Claims**

Applicants have added new Claims 44 and 45 which include the limitations of Claims 6 and 8 of the original application rewritten in independent form.

New Claim 44 recites “selecting a plurality of sellers to each respectively provide at least one competitive bid for the predetermined transaction, wherein the sellers are selected from an appropriate category of a membership database of sellers so as to match buyer requirement information with appropriate seller expertise,” as previously recited in Claim 6. The Examiner indicates that this limitation is disclosed in *Scott*. However, as noted by the Examiner, *Scott* merely discloses that the buyers or other personnel can identify sellers to participate in an auction. Based on this teaching, the Examiner indicates that the limitation of Claim 6 (now Claim 44) is obvious. However, Applicants respectfully submit that providing a categorized membership database of sellers is not obvious from a mere teaching of selecting a seller and that the Examiner is using hindsight to reconstruct the Applicants’ invention.

The M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant’s disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, “The tendency to resort to ‘hindsight’ based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” M.P.E.P. ch. 2142 (Rev. 2, May 2004). The governing Federal Circuit cases are equally clear.

A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider

the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

*In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted). If the Examiner is relying on "common knowledge" or "well known" art to provide the missing limitations, the Examiner is respectfully requested to produce a reference in support of his position as required by M.P.E.P. § 2144.03. Otherwise, if the Examiner is relying on personal knowledge to supply the required teachings, Applicant respectfully requests that the Examiner produce an affidavit supporting such facts as required by M.P.E.P. § 2144.03. Favorable action and allowance of Claim 44 is respectfully requested.

New Claim 45 recites "soliciting feedback so as to enable the sellers to provide comments with at least one of requesting more information and proposing alternatives to the requirement information specified in the auction presentation, wherein the comments obtained are made available to all of the respective plurality of sellers, and wherein the step of soliciting feedback is repeated to enable the sellers to provide further comments on each other's comments," as previously recited in Claim 8. The Examiner indicates that such limitations are disclosed in *Li* at Paragraph 0060. However, this passage only discloses communications between the buyer and a supplier. Respectfully, none of the above-quoted limitations are disclosed. For at least this reason, Applicants respectfully request reconsideration and allowance of Claim 45.

**CONCLUSION**

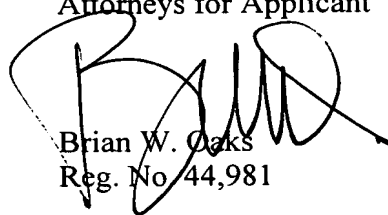
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all the pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Brian W. Oaks, Attorney for Applicant, at the Examiner's convenience at (214) 953-6986.

Please charge a fee in amount of \$510.00 to cover the small entity fee for a three-month extension of time to extend the due date for this Response from October 5, 2006 until January 5, 2007 to Deposit Account No. 02-0384 of Baker Botts L.L.P. In addition, please charge a fee of \$200.00 for two additional independent claims to Deposit Account No. 02-0384 of Baker Botts L.L.P. Although Applicant believes no other fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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